

AF GAV 1645/10

Dkt. 43016-D/JPW/SHS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Philip Livingston and Friedhelm Helling
U.S. Serial No.: 08/477,147 Group Unit: 1645 #19 2/8/00
Filed : June 7, 1995 Examiner: P. Duffy T.Grey
For : GANGLIOSIDE-KLH CONJUGATE VACCINE PLUS QS-21

1185 Avenue of the Americas
New York, New York 10036
January 21, 2000

Assistant Commissioner for Patents
Washington, D.C. 20231

FEB 02 2000
TECH CENTER 1600/2900

Sir:

**COMMUNICATION REQUESTING CONSIDERATION ON
THE MERITS OF A FIRST SUBMISSION AFTER FINAL
REJECTION AND WITHDRAWAL OF FINALITY UNDER 37 C.F.R.
§1.129(a) AND PETITION FOR A FIVE MONTH EXTENSION OF TIME**

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request consideration on the merits of an Amendment in Response to December 21, 1998 Final Office Action as a First Submission in Response to the December 21, 1998 Final Office Action and withdrawal of finality of the December 21, 1998 Final Office Action.

On December 21, 1998, the United States Patent and Trademark Office issued a Final Office Action in connection with the above-identified application. A response to the December 21, 1998 Final Office Action was originally due on March 21, 1999. A Petition for a Three Month Extension of Time was filed on June 21, 1999. A Notice of Appeal was filed on June 21, 1999. Accordingly, an appeal brief was due on August 21, 1999. Applicants hereby request a five-month extension of time. Applicants have previously established small-entity status. The fee for a five-month of extension of time for a small entity is \$925.00 and under 37 C.F.R.

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§1.17(r) the fee for filing a submission after final rejection is \$345.00 and applicants enclose a check which covers these fees. Accordingly, the subject application is pending. Therefore, the Amendment, attached hereto as Exhibit A, is now due January 21, 2000. Accordingly, this Communication and the attached Amendment are being timely filed.

Under 37 C.F.R. §1.129(a), applicants in an application that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365 (c), are entitled to have a First Submission entered and considered on the merits after final rejection if the First Submission and the fee set forth in §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application.

For its earliest priority date, the subject application claims priority of U.S. Serial No. 08/009,268, filed January 22, 1993. Therefore, taking into account this priority reference this application has been pending for at least two years as of June 8, 1995. This Communication is prior to the filing of an Appeal Brief and prior to abandonment of the subject application. Accordingly, the First Submission in Response to the December 21, 1998 Final Office Action under 37 C.F.R. §1.129(a) is being timely filed.

The fee under 37 C.F.R. §1.17(r) for consideration and entry of a first submission after a final rejection is \$345.00. As stated hereinabove, applicants enclose herewith a check which includes this fee.

Under 37 C.F.R. §1.129(a), the finality of the final rejection is automatically withdrawn upon the timely filing of the First

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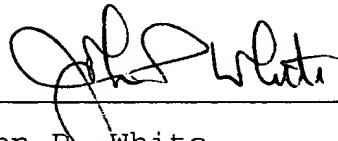
Submission and the payment of the fee set forth in §1.17(r).

Accordingly, applicants respectfully request that the finality of the December 21, 1998 Final Office Action be withdrawn and the Amendment in Response to the December 21, 1998 Final Office Action attached hereto as Exhibit A be considered as the First Submission.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants's undersigned attorney invites the Examiner to telephone at the number provided below.

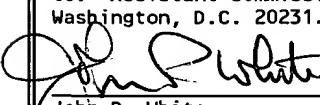
No fee, other than the enclosed \$1516.00 fee which includes the \$925.00 fee for a five month extension of time, the \$345.00 fee under 37 C.F.R. §1.17(r) and \$246.00 fee for additional claims is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



John P. White
Registration No. 28,678
Attorney for Applicant(s)
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1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

 1/21/00

John P. White	Date
Reg. No. 28,678	

Docket No. 43016-D/JPW/SHS

In re application of: Phillip Livingston and Friedhelm Helling

Serial No.: 08/477,147

Group Unit: 1645

Filed: June 7, 1995

Examiner: P. Duffy

For: GANGLIOSIDE-KLH CONJUGATE VACCINES WITH QS-21

HONORABLE ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

January 21, 2000

S I R:

Transmitted herewith is an amendment to the above-identified application.

Small entity status of this application under 37 C.F.R. § 1.9 and § 1.27 has been established by a verified statement previously submitted.

a verified statement to establish small entity status under 37 C.F.R. § 1.9 and § 1.27 is enclosed.

No additional fee is required.

The filing fee is calculated as follows:

	NUMBER AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	NUMBER OF EXTRA CLAIMS PRESENTED	RATE		FEE	
				SMALL ENTITY	OTHER ENTITY	SMALL ENTITY	OTHER ENTITY
Total Claims	45	- * 22	= *** 23	x 9	18	= 207	0
Independent Claims	4	- ** 3	= *** 1	x 39	78	= 39	0
Multiple Dependent Claims(s) Presented _____ Yes <input checked="" type="checkbox"/> No				130	260	0	0
				TOTAL ADDITIONAL \$ 246.00 FEE			

*If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than 20, write "20" in this space.

**If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than 3, write "3" in this space.

***If the difference between the "NUMBER AFTER AMENDMENT" and the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than "0", write "0" in the space.

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The "HIGHEST NUMBER PREVIOUSLY PAID FOR" (Total or Independent) is the highest of the "NUMBER AFTER AMENDMENT" in any prior amendment or the number of claims as originally filed.

Please charge Deposit Account No. _____
in the amount of \$ _____.

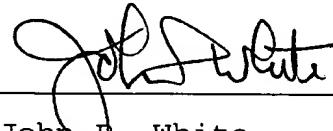
A check in the amount of \$ 1516.00 is enclosed.

The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 03-3125. Three copies of this sheet are enclosed.

Any filing fees under 37 C.F.R. §1.16 for the presentation of extra claims.

Any patent application processing fees under 37 C.F.R. §1.17.

Respectfully submitted,



John P. White
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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
	1/21/00
John P. White Reg. No. 28,678	Date